

APPROVED MINUTES

March 31, 2014

KITTERY TOWN COUNCIL

Council Chamber

SPECIAL MEETING

Requested by Chairperson Thomson

1. CALL TO ORDER: Chairperson Thomson called the meeting to order at 7:30 p.m.
2. INTRODUCTORY: Chairperson Thomson read the introductory.
3. PLEDGE OF ALLEGIANCE: Chairperson Thomson led those present in the Pledge of Allegiance.
4. ROLL CALL: Answering the roll were Councilors Frank Dennett, Charles Denault, Jeffrey Pelletier, Chairperson Jeffrey Thomson, Vice-Chair Russell White, Judith Spiller and Jeffery Brake.

It was noted that the posting date was incorrect on the agenda, but the Town Manager verified that the agenda had been posted on March 27th, 2014.

5. DISCUSSION:
 - a. By members of the public (only pertaining to item 6 below) = NONE
 - b. Chairperson's response to public comments
6. NEW BUSINESS:
 - a. (030414-1) The Kittery Town Council moves to release funds in the amount of \$12,500 from unassigned surplus for the replacement of the Pepperrell Cove septic tank.

Chairperson Thomson said that the money was available as an option by approval of the voters at the Town Meeting on June 11, 2013. He said Council is authorized to take action to transfer an amount not to exceed \$50,000 when necessary and appropriate those funds. He said this is a request from the Port Authority for emergency repairs which were not part of the FY'14 budget.

Chairperson Thomson said this is an opportunity to discuss this item with the Harbor Master and asked Mike Blake and/or the Chair of the Port Authority and Superintendent of Sewer Services if they had any insight to offer Council.

Mike Blake thanked Council for taking the time to look over this request. He said he will give a brief overview of the history of the septic tank. Mr. Blake said that the tank is under the Harbor Master's shed in the parking lot and it has been there for 20-25 years. He said back then, it was not meant to be buried underground for such a long period of time.

Mr. Blake said he had been monitoring the tank, last summer, so it would not overflow and had brought it up to code by having an alarm installed when the water reached the high water mark so it would not contaminate the water.

Mr. Blake said in August, he contacted Bill Morgridge & Son, who came over and emptied the tank, but that is when they discovered a large crack in the tank. He said at that time the Port Authority tried to figure out the best course of action, because they knew the BIG project was coming down the pike; however they were not sure if the project would be going forward.

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Mr. Blake said since they did not want to dig up the parking lot, they decided to close the bathroom and put a port-a-potty down at the pier. He said fortunately, the restaurant had also installed a few port-a-potties, and although it was difficult, they managed to get through the rest of the season.

Mr. Blake said once the BIG project came into being, they would put a pump out for the boats. He said the Port Authority hit a stumbling block because the ordinance does not allow for another tank within 100 ft. of the water. He said they were under a time crunch because the parking lot was being dug up and they were hoping that part of the excavation cost could be absorbed by the BIG project.

Mr. Blake said at this point, no money was set aside in the CIP budget and this tank is not a system, it does not run, it is a tight tank that holds water. He said the Town Manager helped him with the process. Mr. Blake asked if Council had any questions.

Chairperson Thomson replied that first there had to be a motion on the floor.

COUNCILOR SPILLER MOVED THAT THE KITTERY TOWN COUNCIL RELEASE FUNDS IN THE AMOUNT OF \$12,500 FROM UNASSIGNED SURPLUS FOR THE REPLACEMENT OF THE PEPPERRELL COVE SEPTIC TANK, SECONDED BY COUNCILOR WHITE.

Councilor Dennett said he sees numerous references as a septic tank, however, from what he heard, this is a holding tank and asked if he was correct.

Mr. Blake replied yes.

Councilor Dennett asked that the maker of the motion amend the motion to indicate a holding tank.

Councilor Spiller agreed to amend the motion to read that the Council release funds for the replacement of the Pepperrell Cove holding tank, and Councilor White agreed as the seconder of the motion.

COUNCILOR SPILLER MOVED TO AMEND THE MOTION TO BE THAT THE KITTERY TOWN COUNCIL RELEASE FUNDS IN THE AMOUNT OF \$12,500 FROM UNASSIGNED SURPLUS FOR THE REPLACEMENT OF THE PEPPERRELL COVE HOLDING TANK, SECONDED BY COUNCILOR WHITE.

Councilor Dennett asked who owns the tank.

Mr. Blake responded he thought the town did.

Councilor Dennett said that Mr. Blake thought the town did, but it was a legal question.

Mr. Blake replied that in his estimation he thought the town did because it's on town property and has been deeded to the town.

Councilor Dennett said let's presume the town owns it. He said he heard the tank has a crack which is causing the contents to be leaking. He wanted to know if it was possible to have the crack repaired.

Mr. Blake replied from what he was told by Bill Morgridge, it has to be taken out.

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Councilor Dennett said he sees only one proposal and asked if there were any more.

Town Manager Colbert Puff responded that Mr. Blake had sought three, but only received one proposal.

Councilor Dennett asked when did he receive it?

Chairperson Thomson said the estimate is dated March 13th.

Councilor Dennett said that is not the problem, but according to the Purchasing Ordinance it states that if the amount is between \$10-15,000, the request must be accompanied by three RFQ's. He said we have only one, when the ordinance requires three. He wanted to know, from the Harbor Master, if he voted for this, then would he be following the ordinance.

Mr. Blake said he guessed not.

Councilor Dennett said, in reference to Sec. 3.2.1, if the estimate cost \$10,000 or more, at least three formal bids or a statement must be secured in writing.

Town Manager Colbert Puff indicated the Harbor Master had sought three, but was unable to get more than one, and offered to put a note in the file.

Councilor Dennett asked Mr. Blake when did the request for proposals go out.

Mr. Blake replied he did not have the exact dates, but one he sent out yesterday.

Councilor Dennett said that does not give them much time to respond and that the procedure seems to be lacking.

Councilor Dennett asked if the tank had not failed and was functioning, would it continue to be used or replaced.

Mr. Blake responded it would be replaced.

Councilor Dennett asked if it was within 100 ft. of the water.

Mr. Blake answered yes.

Councilor Dennett wanted to know if Mr. Blake had received the blessing from the Code Enforcement Officer.

Mr. Blake replied yes.

Councilor Dennett asked what about a new one.

Mr. Blake responded they cannot put in a new one.

Bob Melanson, Chair, said that Sec. 16.87, 1 and 2 of the ordinance addresses this, and that they had gotten a quote last Fall for \$10,000 to abandon the old tank and install a new one, but the ordinance requires replacing in kind. He said the \$12,500 addresses pulling the old tank out and

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putting in a new one. He said it would be \$2500 more to do this and that is the way the ordinance is framed.

Mr. Melanson said the pump out, which was included in the (BIG) application, is not happening because of the ordinance. He said this information was provided to the Planning Board and the DEP and they endorse putting in the tank.

Councilor Dennett asked if they got a permit from the CEO to replace the tank and wanted to know where it was.

Mr. Melanson replied that the CEO would not allow them to abandon the old tank and put in another, but because it is grandfathered she approved it.

Councilor Dennett said he did not think the CEO assigned a dollar amount to it.

Mr. Melanson said he is just sharing this information with Council.

Councilor Dennett said he would like to see a letter from the Code Enforcement Office about this issue and he would not be voting for this as it was contrary to the Purchasing Ordinance.

Councilor Denault said he went through this with the Channel 22 Committee. He said that the ordinance requires someone to get three bids and Mr. Blake indicated he had sent one out yesterday. He wanted to know when was the date that he wanted to receive them.

Mr. Blake replied that he indicated "as soon as possible."

Councilor Denault said it's a matter of semantics, and "as soon as possible" would be "tomorrow" by his definition, or "yesterday" for people who know me. He wanted to know if three bids went out, did only two, or one come back.

Mr. Blake replied one.

Councilor Denault asked how long between one and three did the one go out.

Mr. Blake replied he called a company and told them he needed the response today.

Councilor Denault asked if Mr. Blake had followed up with them this afternoon.

Mr. Blake replied no.

Councilor Denault wanted to know how big was the tank.

Mr. Blake replied 2,000 gallons.

Councilor Denault said the holding tank is still covered by the ordinance and wanted to know was there any reason why they weren't going with a bigger size.

Mr. Blake replied that issue is addressed by the State and if the tank is being replaced, it cannot be more than 25% greater than the original tank. He said they have to put in another 2,000 gal. tank.

Councilor Denault asked what happened to the 25% greater part.

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Mr. Blake replied they do not make a 2500 tank.

Councilor White said in looking at the purchasing ordinance, it does have some flexibility in language in that it authorizes the Town Manager, as purchasing agent that a bid may be awarded to a supplier offering the lowest bid under \$10,000, but there has to be three bids if it is greater.

Councilor White believed that the Port Authority has done their homework and this is a timely proposal in conjunction with the ongoing excavation. He said that if it is no more than \$12,500 and Mr. Blake has the lowest responsible bid, the Town Manager is authorized to follow the ordinance.

Councilor Dennett said there has to be a statement in writing if there are not three proposals. He said this is the rule and some people are not following the rules.

Councilor Denault asked the Chair if Council could adjourn and have the Town Manager quickly type up a letter.

Chairperson Thomson replied that if there are second and third bidders, and Council will give them a few more days for them to submit their bids. He said if the bids are not received by the end of the week, then this item will be scheduled for next Monday, at 5:45 pm as a Special Meeting before the Council's workshop.

CHAIR THOMSON MOVED THAT COUNCIL POSTPONE TAKING ACTION ON THIS ITEM UNTIL MONDAY, APRIL 7TH AT 5:45 p.m. TO ALLOW TIME TO RECEIVE TWO ADDITIONAL REQUESTS FOR PROPOSALS, OR FOR THE TOWN MANAGER TO TYPE UP AN APPROPRIATE RESPONSE SECONDED BY COUNCILOR SPILLER.

Councilor Denault wanted to know if this was an emergency and did they have to have this done this week.

Mr. Melanson replied no. He said the reason they are requesting this now, is that the pavement is dug up on Bellamy Lane and they want to have the work done before the utilities are laid.

Councilor Denault asked if there would be no problem if this was addressed on Monday.

Mr. Melanson replied no.

Chairperson Thomson said the bid Council has is effective until May 1st.

Councilor Dennett asked who were the other bidders. He said in his opinion, this was thrown haphazardly at Council.

Mr. Melanson replied that Mr. Patten had given them a quote.

Mr. Blake said the other bidder was Greg's Septic Service.

Councilor Dennett noted that all departments must send out bids or RFP's stating a solicitation date of "on or before such and such, and at such and such a time."

ROLL CALL VOTE WAS TAKEN WITH ALL VOTING IN FAVOR. MOTION PASSED 7-0.

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7. ADJOURNMENT:

COUNCILOR PELLETIER MOVED TO ADJOURN THE MEETING AT 7:52 P.M., SECONDED BY COUNCILOR SPILLER. ALL WERE IN FAVOR BY A VOICE VOTE. MEETING ADJOURNED.

/bb